

BEFORE THE

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Federal Communications Commission

WASHINGTON, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)

Implementation of Section 25)
of the Cable Television Consumer)
Protection and Competition Act of 1992)

MM Docket No. 93-25

Direct Broadcast Satellite)
Public Service Obligations)

REPLY COMMENTS OF CHILDREN'S TELEVISION WORKSHOP

Children's Television Workshop ("CTW") hereby responds to comments filed pursuant to the FCC's January 31, 1997 Public Notice (FCC 97-24) inviting comments to refresh the record in the captioned proceeding, which was initiated by a Notice of Proposed Rule Making issued in 1993 (8 FCC Rcd 1589) ("Notice").

CTW's Comments proposed that DBS providers' public service obligations under Section 25(a) of the 1992 Cable Act include the provision of educational and informational programming, and that the Section 25(b) reservation for educational programming provided by non-profit programmers should be implemented so as to stimulate the production of quality educational children's programming for dissemination on the reserved capacity. Other commenters supported these goals, and the Commission should foster their achievement.

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I. THE SECTION 25(a) PUBLIC SERVICE OBLIGATION SHOULD INCLUDE THE DISTRIBUTION OF CHILDREN'S EDUCATIONAL PROGRAMMING.

CTW asked the Commission to require direct broadcast satellite providers to dedicate the lesser of 3% of activated channel capacity or two program channels to regularly-scheduled half-hour children's educational programming transmitted from 7 a.m. to 10 p.m., as a component of their Section 25(a) public service obligation. Because such programming would be offered pursuant to Section 25(a), not Section 25(b), it could unquestionably include commercials, thereby making its production by entities such as CTW economically feasible.

Like CTW, the Center for Media Education, Peggy Charren, the American Association of School Administrators, et al. (together "CME"), noting the dramatic growth of the DBS industry since the issuance of the Notice, advance strong public policy reasons why DBS providers should be subject to the same guidelines as conventional broadcasters with respect to children's educational and informational programming.¹ Citing a study demonstrating the lasting educational benefits of watching "Sesame Street" and similar programs during the preschool years, CME recommends a three-hour per week per channel processing guideline for children's educational programming to be offered between 8 a.m. and 11 p.m. EST, the equivalent of 3% of total capacity available during the 15-hour time period. CME asks the Commission to apply the commercial limits applicable to children's programming distributed over broadcasting and cable facilities to this programming, and to require DBS operators to complete and make available quarterly reports of their compliance with the children's programming obligation.²

¹ CME Comments at 2-7.

² Similarly, the Denver Area Educational Telecommunications Consortium, Inc.,
(continued...)

By contrast, the comments of representatives of the DBS industry pointedly ignore Congress' directive that the political access requirements of Sections 312(a)(7) and 315 are the *minimum* public interest requirements to be imposed on DBS. 47 U.S.C. § 335(a). In the view of CTW and other commenters, the DBS industry has matured sufficiently to assume some of the same responsibilities undertaken by other media to educate and inform America's children. To limit DBS providers' public service obligations to providing national federal political candidates with access to DBS facilities, as the industry requests, would render Section 25(a) virtually meaningless. Accordingly, the Commission should adopt CTW's (or CME's) proposal.

II. THE SECTION 25(b) RESERVATION OF CHANNEL CAPACITY CAN BE IMPLEMENTED SO AS TO ALLOW ACCESS BY QUALIFIED NON-PROFIT ENTITIES, WHILE MAINTAINING THE HIGH PROGRAMMATIC STANDARDS NECESSARY TO ATTRACT NATIONAL AUDIENCES.

In their comments, members of the DBS industry uniformly urge that Section 25(b)'s required reservation of 4 to 7% of channel capacity for noncommercial programming of an educational or informational nature be limited to 4% for all DBS providers. They further argue that the requirement need not be met by the provision of channels dedicated exclusively to such programming, but that the operator should instead be permitted to mix and match dayparts and channels to achieve the hourly equivalent of 4%. Providers also insist that under the statute, they,

²(...continued)

A*DEC, et al. (together, "DAETC") ask the FCC to require DBS providers to set aside, in addition to the capacity required to be reserved under Section 25(b), 3% of capacity for public interest programming, one-third of which must be educational children's programming. DAETC Comments at 6-7.

not just “national educational programming suppliers,” may program the capacity.³ Apparently underlying these claims is DBS providers’ concern that if access to a large amount of reserved capacity must be provided on dedicated channels to all comers, those channels will go unwatched because they will not be comprised of the attractive packages of high-quality public interest programming that will appeal to national audiences.⁴

CTW submits that DBS providers’ business concerns can be addressed without rendering the statute meaningless, as the DBS industry’s proposals would do. First, given the robust state of the industry’s health, as attested to by several commenters,⁵ the reserved capacity should be set at 7%, not 4%, for all DBS providers, but as suggested in CTW’s Comments, the FCC should reduce that requirement by 1% for each children’s channel offered in fulfillment of the Section 25(a) children’s programming requirement that is programmed by a non-profit entity eligible to use the Section 25(b) setaside capacity.

Second, CTW agrees with APTS/PBS and DAETC that only non-profit public broadcasting and public telecommunications entities, public television stations, and educational institutions may utilize the Section 25(b) reserved capacity.⁶ But as APTS/PBS and CTW recommended, joint programming ventures between eligible non-profit entities and commercial enterprises should be permitted, so long as the non-profit enjoys editorial control over the

³ See, e.g., Satellite Broadcasting and Communications Association (“SBCA”) Comments at 4, 6-9, 12; DirecTV, Inc. Supplemental Comments at 5-8, 11-12.

⁴ See, e.g., SBCA Comments at 3-4; DirecTV Supplemental Comments at 4.

⁵ CME Comments at 2; Association of America’s Public Television Stations and the Public Broadcasting Service (“APTS/PBS”) Comments at 3-5; US WEST, Inc. Comments at 4, 6; Time Warner Cable Comments at 2-4.

⁶ APTS/PBS Comments at 13-15; DAETC Comments at 10-13.

programming to be distributed by means of the reserved capacity.⁷ With adequate funding from commercial partners, noncommercial programmers will be able to create programming with the production values desired by the DBS industry.

A third means of fostering the caliber of educational programming sought by these providers is to permit programming that they *purchase from* qualified non-profit entities to count toward fulfillment of the capacity reservation requirement. As APTS/PBS point out, the Commission should not adopt regulations that would inhibit the ability of those qualified noncommercial entities who are able to negotiate payment for DBS carriage of their programming to do so:

Such a policy benefits everyone -- it allows the public access to noncommercial programming, provides the noncommercial entity with access to resources that help to fund the programming, and helps the DBS provider to satisfy its statutory obligation.

APTS/PBS Comments at 21 n. 28; see also Comments of Consumer Federation of America (“CFA”) at 23 (such contractual arrangements “will encourage the development of the highest quality noncommercial educational programming”).

Fourth, as CTW’s Comments suggested, the quality of reserved capacity programming will also be enhanced if non-profit programmers are permitted to insert commercial matter in such programming, thereby increasing the economic feasibility of creating it. A similar proposal was advanced in DAETC’s Comments: that if the DBS provider is unable to fill more than 4% of its

⁷ APTS/PBS Comments at 18-19; CTW Comments at 9. CTW believes that equally shared editorial control is also sufficient.

capacity with noncommercial programming, it should be permitted to satisfy the balance of its reservation requirement with programming from non-profit entities that is 80% noncommercial.⁸

Finally, CTW's Comments also urged that where demand for the reserved capacity exceeds supply, DBS providers should be permitted to select from among qualified programming, much as a cable operator may select among broadcast stations eligible for mandatory carriage where the number of such stations exceeds the operator's carriage obligation.⁹

For all these reasons, if the Commission adopts CTW's suggestions, the DBS industry's fears of an unwatched "access ghetto" will not be realized.¹⁰ But to better serve the statutory goal of providing viewers with meaningful access to educational programming, such programming should also be, as many commenters point out, available on the "basic" tier, able to be received without special decoding equipment, and placed on dedicated, consistently identified channels, not scattered piecemeal throughout the provider's offerings.¹¹

CTW also agrees with APTS/PBS that existing program contracts with DBS providers should not be grandfathered, where to do so would effectively render Section 25(b) moot.¹²

⁸ DAETC Comments at 15-16. A 20% commercialization rate is equivalent to the weekday children's commercial limit of 12 minutes per hour that applies to broadcasters and cable operators. See 47 C.F.R. §§ 73.670, 76.225.

⁹ 47 U.S.C. § 534(b)(2).

¹⁰ For similar reasons, the DBS industry's proposal to fund a non-profit corporation to determine criteria for qualifying programs and to approve particular programs, whose recommendations the industry nevertheless would be free to ignore, is unnecessary. SBCA Comments at 5-8.

¹¹ APTS/PBS Comments at 25-29; CFA Comments at 8, 10-11; Encore Media Corporation Comments at 15-17. The children's programming broadcast pursuant to Section 25(a) should also be required to be placed on the basic tier.

¹² APTS/PBS Comments at 44-45; see also CFA Comments at 12.

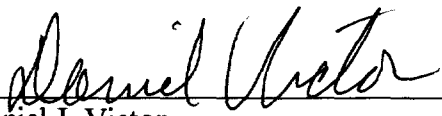
CONCLUSION

As several commenters point out, in light of the DBS industry's expanded channel capacity and growing market share, it is now appropriate for DBS providers to assume meaningful public service obligations, including service to children. To implement Section 25(a) of the 1992 Cable Act, the FCC should require DBS providers to devote the lesser of three percent of channel capacity or two dedicated channels to programming designed to address the educational and informational needs of children. If non-profit entities supply this programming, DBS providers should be permitted to reduce commensurately their obligation under Section 25(b) of the Act to reserve channel capacity for educational programming.

Unless so reduced, the reserved capacity should be set at 7%, not 4% as requested by the DBS industry. Moreover, programming that fulfills the Section 25(b) reservation may be provided only by non-profit organizations, not by DBS licensees or service providers themselves. However, commenters agree with CTW that to promote quality offerings for the setaside channels, DBS providers may pay for such programming, and it may be produced through joint ventures with commercial entities so long as non-profit entities control editorial content.

Respectfully submitted,

CHILDREN'S TELEVISION WORKSHOP

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